

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 5, 2017 appellant, then a 44-year-old letter carrier and shop steward, filed a traumatic injury claim (Form CA-1) alleging that he developed post-traumatic stress disorder (PTSD) while in the performance of duty. He alleged that his PTSD occurred as a result of a July 3, 2017 notice and subsequent investigative interview on July 5, 2017.

By decision dated August 28, 2017, OWCP denied appellant's claim as the evidence did not establish that his alleged emotional condition occurred in the performance of duty. Specifically, it found that he had not established compensable factors of employment.

On September 20, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 7, 2018. At the hearing, he alleged that he had believed that the July 5, 2017 meeting would be a labor/management meeting. However, the meeting concerned appellant's absences from work. Appellant's representative alleged that since appellant was a union steward, if management wanted to conduct an investigative review, regarding the steward's attendance, an appointment should have been scheduled with the union office. Appellant also alleged that his supervisor had improperly placed his mail into a blue collection box, on or about May 14, 2017, which was a felony, and that he had filed a grievance over this matter. Following the hearing, appellant's union representative submitted a statement dated March 5, 2018 which related that, if management wanted to conduct an investigative interview of a union steward, the union office would be notified so that a union officer could represent the steward at the interview.

By decision dated April 20, 2018, an OWCP hearing representative set aside the August 28, 2017 decision and remanded the case for further development on the issue of whether appellant developed an emotional condition as a result of a May 2017 incident involving mail found in a collection box and the investigative interview of July 5, 2017.

In a statement dated August 20, 2018, appellant's supervisor related that the station manager had contacted union hall to have appellant's union representative present at the investigative interview. She also related that she had conducted an investigative interview in 2017 with appellant regarding his attendance and that appellant's representative was present.

By decision dated September 13, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish a compensable employment factor and therefore he had not established an emotional condition in the performance of duty.

On October 2, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on February 11, 2019. Appellant's representative contended that, while he had not been properly notified of appellant's investigative interview, he was present for other interviews that day, and therefore was also able

to attend appellant's interview. Appellant also testified that when he learned that the interview would be an investigative interview he believed that it would concern his mail which was found in collection boxes.

In a letter dated February 12, 2019, a coworker, M.T. related that, on May 15, 2017 while collecting mail from blue collection boxes, he found processed mail from appellant's route. He related that delaying mail was a crime so he informed the postmaster of his discovery, but he was never questioned further regarding the matter. M.T. related his belief that the matter never moved forward because a supervisor was involved.

By decision dated April 30, 2019, an OWCP hearing representative affirmed OWCP's September 13, 2018 decision.

On May 1, 2020 OWCP received appellant's April 19, 2020 reconsideration request and additional evidence. In his April 19, 2020 statement requesting reconsideration, appellant indicated that he had filed a grievance and had requested documents and interviews with the appropriate people when he became aware that processed mail from his route was found in two collection boxes outside the territorial limits of his duty station. He did not receive the requested documents or interviews, acknowledging his dual role as a shop steward. Appellant indicated that the grievance was resolved to protect him from being wrongfully accused of committing an offense that would have led to his removal. He alleged, however, that he was not consulted on the resolution of the grievance and believed that management had agreed to the resolution as they knew one of their own was guilty. In support of his contention, appellant submitted a December 12, 2019 Regular Arbitration Panel Award Summary, which he alleged demonstrated how management failed to investigate one of their own. He further alleged that the employing establishment did not properly investigate the May 2017 incident pertaining to the misplacement of mail from his route incident and had failed to comply with the hearing representative's April 20, 2018 decision to provide all the documents and findings regarding the investigation. With regard to his investigative interview for attendance, appellant alleged that management had erred as he was interviewed prior to the expiration of the time limit for providing acceptable documentation. He indicated that he would have filed a grievance in the matter if he had not claimed an injury and resumed working.

In support of his reconsideration request, appellant submitted duplicative evidence previously of record. New evidence included a December 12, 2019 Regular Arbitration Panel Award Summary, which noted that the issue to be decided was whether management violated Articles 14 or 19 of the National Agreement by allowing 204B C.B. to act inappropriate towards city carriers and, if so, what was the appropriate remedy. A May 20, 2017 National Association Letter Carrier form addressed to a supervisor, asking to begin an investigation, and an April 23, 2020 request for reconsideration were also submitted.

By decision dated June 12, 2020, OWCP denied appellant's request for reconsideration on the grounds that it was untimely filed and failed to demonstrate clear evidence of error.

On August 5, 2020 OWCP received evidence that confirmed appellant had submitted his request for reconsideration by mail and had a receipt for mailing two weeks prior to the April 30,

2020 filing deadline for timely reconsideration requests. On its own motion OWCP decided to review his request for reconsideration under the standard for a timely reconsideration request.

By decision dated November 12, 2020, OWCP denied his request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.³

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁵ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁶ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant's April 19, 2020 reconsideration request neither alleged nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that he did not advance a relevant legal argument not previously considered by OWCP. In his reconsideration request, appellant alleged that the employing establishment failed to conduct a full

³ 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

⁴ 20 C.F.R. § 10.606(b)(3); *see L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁶ *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

⁷ *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

investigation into the May 2017 misplacement of mail from his route, and had failed to provide him with the documents and interviews he requested. He also acknowledged that the grievance he had filed over these matters was resolved, but that the matter should have been further investigated. While appellant offered his opinion as to why the employing establishment resolved the grievance and failed to conduct a proper investigation, his opinion based on conjecture, is cumulative of his prior allegations and does not establish that the employing establishment acted in error regarding this administrative matter. The Board has found that argument or evidence which is duplicative or cumulative in nature is insufficient to warrant reopening a claim for merit review.⁸ The Board therefore finds that this argument does not comprise a legal basis for reopening the case on its merits.⁹ Appellant additionally alleged error with regard to his investigative interview for attendance. However, he has not shown that interviewing him prior to the expiration of time limit for documentation violates any employment establishment policy, such that this action constituted error or abuse in consideration of this administrative action. Thus, appellant did not allege a relevant new legal argument and he is not entitled to further review of the merits of his claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided any relevant and pertinent new evidence not previously considered. The underlying issue in this case is whether appellant has established a compensable factor of employment in the performance of duty, but he did not submit relevant and pertinent new evidence in support of his request for reconsideration. The December 12, 2019 Regular Arbitration Panel Award Summary is not relevant to his claimed employment factors as it concerns claims related to another individual. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ Appellant also submitted duplicative evidence previously considered. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.¹¹ As appellant failed to provide relevant and pertinent new evidence, he is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁸ *J.S.*, Docket No. 14-1601 (issued December 10, 2014); *Denis M. Dupor*, 51 ECAB 482 (2000).

⁹ *E.L.*, Docket No. 18-1262 (issued March 11, 2019); *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004).

¹⁰ *E.L.*, *id.*; *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

¹¹ *See A.G.*, Docket No. 19-0113 (issued July 12, 2019); *L.R.*, Docket No. 18-0400 (issued August 24, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board